



*United States Attorney
Southern District of New York*

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**U.S. REACHES NON-PROSECUTION AGREEMENT
WITH ROYAL A HOLD, N.V.**

MICHAEL J. GARCIA, United States Attorney for the Southern District of New York, announced today that his Office has reached a non-prosecution agreement with Royal Ahold, N.V. (Ahold), a Dutch food conglomerate, in connection with a scheme carried out by executives at Royal Ahold's subsidiary, U.S. Foodservice (USF), to inflate USF's reported results of operations. In an Indictment filed in July 2004, a grand jury in the Southern District of New York charged former USF executives (former Chief Marketing Officer and Executive Vice President of Purchasing MARK P. KAISER and USF's former Chief Financial Officer MICHAEL J. RESNICK) with conspiracy and securities fraud charges. The charges are in connection with their efforts to artificially reduce USF's costs through the improper recognition of over \$800 million in fictitious "promotional allowances." Specifically, the fictitious "promotional allowances" were supposed rebates received from USF's own suppliers, during 2000 to 2003.

The charges against KAISER will be tried beginning October 10, 2006. RESNICK pleaded guilty on September 8, 2006 to participating in a conspiracy to keep false books and records while employed at USF, and will be sentenced on December 11, 2006, before United States District Judge SIDNEY H. STEIN.

The Accounting Fraud Scheme

The Indictment against KAISER charges him with participating in an illegal scheme to inflate falsely USF's earnings by hundreds of millions of dollars through an artificial reduction of USF's cost of sales. The scheme is alleged to have taken place between approximately 2000 and approximately February 2003.

According to the Indictment, USF was one of the United States' leading distributors of food and related products to

customers such as restaurants and cafeterias. The Indictment charges that USF typically purchased the products it resold to its customers from a variety of suppliers at full price. However, the suppliers often refunded to USF a portion of the purchase prices in the form of negotiated rebates, known as "promotional allowances." Promotional allowances, according to the Indictment, reduced USF's cost of sales and thereby increased USF's earnings.

According to the Indictment, KAISER and other USF officers and employees falsely inflated USF's earnings by causing USF to record hundreds of millions of dollars in fictitious promotional allowances that had not been earned. The Indictment alleges that the conspirators took various steps to perpetuate and hide their fraud, including the following: inducing USF's suppliers to sign and provide to USF's outside auditors fraudulent audit confirmations, which falsely attested that the promotional allowances claimed by USF were, in fact, due and owing; manipulating and misapplying rebate-related cash receipts; and lying to USF's auditors.

It is alleged that KAISER and others knew that USF's inflated earnings would, in turn, inflate Ahold's consolidated earnings that were reported to the public in its periodic filings with the SEC and elsewhere.

According to the Indictment, in February 2003, Ahold announced that it would issue restated consolidated financial statements based, in substantial part, on the overstatement of promotional allowances by more than approximately \$500 million. Following that announcement, the price of Ahold's securities - including American Depository Receipts, which were traded on the New York Stock Exchange - plummeted by more than 60 percent, representing a decline in Ahold's market capitalization of approximately \$6 billion. Subsequently, in May 2003, according to the Indictment, Ahold announced that promotional allowance income at USF had been overstated by more than approximately \$800 million.

The Non-Prosecution Agreement

The non-prosecution agreement provides that Ahold will not be prosecuted for (1) the accounting fraud conduct set forth in the Indictment and a related civil suit by the Securities and Exchange Commission (SEC); and (2) false statements to the United States Department of Defense or any other agency of the United States related to the pricing of goods sold by Ahold or USF to the United States, during 2000 to the present. The latter matter

remains under investigation by the Civil Division of the United States Attorney's Office, as previously announced by Ahold.

The non-prosecution agreement requires that Ahold continue to cooperate with the United States.

The decision by the United States Attorney to enter into the non-prosecution agreement was based on the factors set forth in former Deputy Attorney General Larry Thompson's memorandum, Principles of Federal Prosecution of Business Organizations (the Thompson Memorandum). The decision was based on, among others, the following factors: Ahold's full cooperation with the Government's investigation; Ahold's settlement of the SEC's enforcement action, which included Ahold's consent to an injunction against Ahold's violating the antifraud and other provisions of the U.S. securities laws; Ahold's settlement of a class action brought against it by victims of the accounting fraud scheme, including Ahold's agreement to pay a total of \$1.1 billion to class members to compensate them for the damages caused by the fraud at USF; and the negative effect that charges against Ahold would have on the companies' innocent employees and legitimate activities.

Ahold self-reported the misconduct and conducted an extensive internal investigation, including an investigation of misconduct beyond that at USF. It made its personnel available for interviews by Government investigators, including bringing witnesses to the United States from abroad, and made available to the Government the factual results of its internal investigation. In addition, Ahold terminated employees responsible for the wrongdoing at USF.

Because Ahold has cooperated fully with the Government's investigation, has settled the SEC enforcement action, and has made substantial restitution to victims through the \$1.1 billion class action settlement, the public interest has been sufficiently vindicated. Moreover, criminal prosecution of Ahold would likely have a severe and unintended disproportionate economic impact upon the many innocent Ahold employees worldwide. Accordingly, Mr. GARCIA stated that, after carefully balancing all of the factors set forth in the Thompson Memorandum, criminal prosecution of Ahold would not serve the public interest.

Mr. GARCIA, a member of the President's Corporate Fraud Task Force, praised the efforts of the Federal Bureau of Investigation (FBI), and thanked the SEC for its assistance in the investigation.

Assistant United States Attorneys LAWRENCE GERSCHWER
and JASON SABOT, and Special Assistant United States Attorney
ALEX LIPMAN are in charge of the prosecution.

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